IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 2049 OF 2002

Nisha Anand Sagar .. Petitioner

Vs.

Madhukar Vitthal Karnik and ors. .. Respondents

Mr. Shekhar Shetye with Mr. Viral Amin i/by B.Amin & Co. for Petitioner.

Ms. Neeta Karnik with Ms. Sonali Pramod Karnik for Respondent Nos.1 to 5.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2005.

P.C.:

1. Heard Mr. Shetye, the learned counsel for the petitioner-defendant who is aggrieved by the order dated 2/7/2002 passed by the learned Joint Civil Judge, Junior Division at Dahanu on an application at Exh.45 whereby it was contended that Regular Civil Suit No.41 of 2000 was not properly valued and, therefore, the court concerned lacked the pecuniary jurisdiction. While rejecting the application, the court held that the suit was maintainable and the

valuation for payment of court fees done on the basis of the value shown in the sale deeds dated 16/1/1989 and 3/5/1989 was legal. There is no dispute that the court fees was paid on combine consideration of Rs.95,000/- on the basis of two sale deeds i.e. sale deed dated 16/1/1989 and sale deed dated 3/5/1989. The defendants, on the other hand had claimed that the suit was valued for payment of the court fee on the basis of the market value of the suit land and which as per them was at the relevant time Rs.30 lacs. The defendants had relied upon the provisions of Section 6(iv)(ha) of the Bombay Court Fees Act, 1959. The learned counsel for the petitioner, during the course of his argument, also relied upon the provisions of Section 6(iv) of the said Act, in addition to the other provisions as referred to before the trial court.

2. The suit property as described in the plaint is land admeasuring 19 hectors and 8 ares located in Gat No.15 of village Amboli, Taluka Dahanu and assessed at Rs.5/-. The reliefs prayed for in the

suit substantially were as under :-

> (a) It be declared that the plaintiffs are the lawful owner and are entitled for possession of the suit property.
>
> (b) The sale deed dated 16/01/89 and 03/05/89 be declared to be illegal, null and void and be cancelled and set aside.
>
> (c) The defendants be ordered to deliver the vacant, peaceful and quiet possession of the suit property and further to put the plaintiffs in unobstructed possession of the suit property by removing all impediments if any.

. It was contended by the plaintiff that the suit property belonged to, amongst other, late Prabhakar Appaji Karnik, who died intestate leaving behind him his widow Renukabai as the only heir. Renukabai became the sole owner of the suit property and other lands and she died on 19/7/1971 without leaving behind any class of heirs of her husband Prabhakar. It was further contended by the plaintiffs that under the Hindu Succession Act the property of Renukabai devolves in the absence of class I heirs or heirs of her husband who did not have heirs from entry

no.I, II and III and the plaintiffs come under entry no.IV i.e. through Vinayak A. Karnik, the brother of Prabhakar Karnik.

3. Sections 6(iv)(d), 6 (iv)(ha) and 6(v) of the Bombay Court Fees Act, 1959 read as under :-

> 6. **Computation of fees payable in certain suits**
>
> (i) .....
> (ii) ......
> (iii) ......
> (iv) (a)......
> (b)......
> (c)......
>
> (d) for ownership etc. of immoveable property, etc.
>
> In suits for declaration in respect of ownership,or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immoveable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to a minimum fee of one hundred rupees.

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of sixty rupees whichever is less:

Provided further that, whenever the defendant is or claims under or through a limited owner, the amount of fee shall be one third of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee:

(e)
(f)
(g)
(h)

(ha) **for avoidance of sale, contract for sale etc.**

In suits for declaration that any sale, or contract for sale or termination of contract for sale, of any moveable or immoveable property is void - one half of ad valorem fee leviable on the value of the property.

(hb)
(i)
(j)

(v) **for possession of lands, houses and gardens.**

In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden according to the market value of the house or garden and where the subject-matter is land, and -

(a) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to forty times the survey assessment;

(b) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to eighty times the survey assessment; and

(c) where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b) as the case may be, in addition to eighty times the assessment or, the portion of assessment, so remitted.

4. The trial court referred to the judgment of the Constitution Bench in the case of Sathappa Chettiar V/s. Ramunathen Chettiar reported in **AIR 1956 SC 245** and more particularly para 15 therein.

The said observations read as under :-

> "There can be little doubt that the effect of the provisions of section 8 is to make the value for the purpose of jurisdiction dependant upon the value as determinable for the computation of Court fees in suits falling under sec.7(iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the vlaue of jurisdiction must no doubt be the same in such cases, but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice-versa."

5. The learned counsel for the petitioner referred to para 14 of the said decision of the Constitution Bench and submitted that the view taken by the trial court was not in keeping with the same enunciation. These submissions are devoid of merits. The main relief as is obvious from the plaint is that of declaration of the two sale deeds as being illegal, void ab initio and not binding on the plaintiffs. The

prayer for possession of the suit property is consequential to the main reliefs of declaration of ownership and declaration of the sale deeds being illegal, null and void. The plaintiffs had prayed for the sale deeds being cancelled and set aside. Under these circumstances, the view taken by the trial court cannot be said to be palpably erroneous so as to call for interference at the hands of this court in the revision application and, therefore, challenge to the impugned order fails.

6. The Civil Revision Application is rejected summarily.

(B.H. Marlapalle,J.)